

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

FEB 18 1983

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

Honorable William B. Duncan
Chairman
Lauderdale County Commission
P. O. Box 1059
Florence, AL 35631

Counties - Competitive Bid Law -
Conflicts of Interest

The Lauderdale County Commission may purchase automobiles and parts from a dealership where a Commissioner is employed provided the Commissioner receives no benefit from the contract. The Commissioner should not participate in the decision to award the contract to the automobile dealership.

Dear Judge Duncan:

In a recent letter addressed to this office, you asked for an opinion on the following question:

"Bobby McCormick was elected County Commissioner in Lauderdale County on November 2, 1982 and has now assumed his office. Mr. McCormick is employed as a salesman for Bobby Mitchell Chevrolet, Inc. and has been for many years.

From time to time the County purchases motor vehicles for the county from Bobby Mitchell Chevrolet, Inc. when

they are the low bidder and on a regular basis, purchase parts and service for county vehicles.

My question is: Would Commissioner McCormick violate any statute in voting upon a motion to purchase vehicles or parts and service where Bobby Mitchell Chevrolet, Inc. is concerned."

Code of Alabama 1975, Section 41-16-60, reads, in pertinent part, as follows:

"No member or officer of
the county commissions
shall be financially interested
or have any personal beneficial
interest, either directly or
indirectly, in the purchase of
or contract for any personal
property or contractual service,
nor shall any person willfully
make any purchase or award any
contract in violation of the
provisions of this article"

The Attorney General is of the opinion that Section 41-16-60 does not prohibit the Lauderdale County Commission from doing business with the automobile dealership where one of the Commissioners works as a salesman if the Commissioner does not receive a commission or any other benefit from the sales to the County Commission. However, if the County Commissioner receives a financial or other benefit from the sales to the County, the language of Section 41-16-60 clearly prohibits the County from doing business with that automobile dealership.

Regarding the right of the Commissioner to vote on the question of whether the County Commission is to purchase automobiles from the dealership at which he is a salesman, the Attorney General is of the opinion that public policy would preclude him from voting in that case. An indication that public policy precludes a county commissioner from voting on a contract in which he has an interest is seen in Code of Alabama 1975, Section 11-3-5. That provision states:

Any member of any county commission who shall award any contract in which the county of such commissioner is interested to any person related either by blood or marriage within the fourth degree to such commissioner or who shall employ any such relative to do any work for said county or to act as agent for any such member in any work in which such county is interested shall be guilty of a misdemeanor and, on conviction, shall be fined not less than \$10.00 nor more than \$100.00.

The Supreme Court in Garrison v Sumners 24 Ala.App.281, 134 So.675 concluded that this Section does not preclude a county commission as a body from awarding contracts to a relative of a County Commissioner if the Commissioner does not participate in the decision. In the same way under Code of Alabama 1975, Section 41-16-60 the County Commission may contract with a corporation at which a Commissioner is employed providing the Commissioner receives no benefit from the contract, but the Commissioner should not participate in the decision to award the contract to the corporation.

Furthermore, the question presented herein may involve a violation of the State Ethics Law. Therefore, you should present the question to the State Ethics Commission.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By:


LYNDA F. KNIGHT
Assistant Attorney General

CAG/LFK/dpb